

Statement of
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On the Native American Graves
Protection and Repatriation Act
(P.L. 101-601)

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Mr. Chairman and members of the Committee: I am W. Donald Duckworth, Ph.D., President and CEO of the Bishop Museum in Honolulu, Hawai'i, presenting testimony on behalf of my institution and on behalf of the American Association of Museums, for which I serve on the Board of Directors.

In 1990, the Native American Graves Protection and Repatriation Act, "NAGPRA," became law (P.L. 101-601). NAGPRA is remedial legislation enacted by Congress to ensure that Native American remains, funerary and other objects retained by the federal government and by the museum community are returned in accordance with the law to appropriate tribes and Native American organizations for reburial or other proper care.

The Bishop Museum is committed to fulfilling both the letter and spirit of NAGPRA. I would like to take this opportunity to comment on the Bishop Museum's experiences over the last nine years as it has worked to fulfill both the letter and spirit of NAGPRA, and then to comment on the national situation for museums with respect to NAGPRA.

Bernice Pauahi Bishop Museum was founded in 1889 by Charles Reed Bishop, a businessman from Glens Falls, New York, as a memorial to his wife, Princess Bernice Pauahi Bishop, the last of the Kamehameha line of ruling chiefs. Since its inception 110 years ago, the Museum has been dedicated to the preservation, perpetuation and interpretation of the natural and cultural history of Hawai'i and the Pacific. The Museum's role in the Hawaiian community has always been a very special one. The Museum preserves and cares for 1,470,000 collection items that represent the rich and wonderful legacy of Native Hawaiian culture and that tell the story of those who care for the land and each other, respect the spiritual forces of nature, and create things of great beauty and skill. Caring for these collections is a great responsibility guided by professional standards, legal requirements and cultural sensitivity. We carry out this responsibility with Native Hawaiians for their benefit and the benefit of all the people of Hawai'i, past, present and future.

In 1990 Bishop Museum presented testimony to this distinguished committee in favor of the passage of NAGPRA. At that time we estimated that Bishop Museum retained 2,590 Hawaiian remains and funerary objects. We also pointed out that repatriation and consultation with Native Hawaiian organizations were not new to us. We had repatriated Native Hawaiian human remains prior to the passage of NAGPRA and were in the process of repatriating human remains at the time NAGPRA was enacted. We noted that the Bishop Museum was dedicated to serving the Native Hawaiian community and actively sought ways to improve its relationship with this community. We saw NAGPRA as one such way to ensure greater and more meaningful involvement of the Native Hawaiian community in the Museum's future.

Since the passage of NAGPRA in 1990, Bishop Museum has repatriated 4,252 Native Hawaiian human remains and funerary objects. This number, the result of NAGPRA mandated inventories, and nearly double what we were able to estimate in 1990, represents all the Native Hawaiian human remains and funerary objects that were retained by Bishop Museum in its collections. These inventories were carried out in consultation with Native Hawaiian organizations and verified by Native Hawaiian claimants as part of the repatriation process. We are pleased to report that we have completed the repatriation under the law of all Native Hawaiian human remains and funerary objects.

In 1990, we estimated the cost of repatriation to be \$388,500. The actual costs are expected to reach \$1,000,000, most of which will have been for personnel costs, including consultation. About 64 per cent of the cost was provided by Museum operating funds. The remainder was funded by a contract from the U.S. Navy, a contract from the Office of Hawaiian Affairs (discontinued after nine months' work following consultation with Native Hawaiian organizations), and a grant from the National Park Service (NPS).

A substantial part of the costs were due to an inventory conducted under a U.S. Navy contract, which required background historical research, summaries of existing research conducted on the human remains, and a detailed inventory of a large number of human remains by a physical anthropologist. The contract was begun a few months after the enactment of NAGPRA and completed a few months after the National Park Service published the preliminary proposed guidelines. Consultation with Native Hawaiian organizations was minimal.

Shortly after the completion of the inventory and report, the Museum and the Navy were sued by Hui Malama I Na Kupuna o Hawai'i Nei (Hui Malama), a Native Hawaiian organization named in NAGPRA. Hui Malama contended that new research was conducted on the remains as part of the inventory and that the resulting report contained material that was offensive to both the ancestors that were represented by the remains and their present day descendants. Bishop Museum was subsequently released with prejudice from the suit. Ultimately the court decided in favor of the Navy. As a result of this inventory and report, the Museum lost funding for an inventory of Hawaiian remains from the island of O`ahu, the second largest collection in the Museum. The costs of the lawsuit were substantial to the Museum and Hui Malama, both in terms of funds and emotional health. The lesson learned was that consultation was at the core of NAGPRA and that there never could be enough of it.

Before and after the U.S. Navy contracted inventory, the process for every inventory, including consultation and repatriation, was carried out without incident and to the satisfaction of all involved. The number of consultations increased in time to include more members of Hawaiian organizations, elders and families. The relationship of the Bishop Museum to these organizations did in fact improve as we had hoped. In some cases, claimants grew to understand and appreciate the role of the Museum as a caretaker and loaned back the repatriated objects for safekeeping, or withdrew their claims. The sense of responsibility for all Hawaiian collections items in the Museum grew among these consultant groups. As a result of these consultations, the Museum created a special, secure area with restricted access that serves as both a storage and ceremonial area for what Native Hawaiians consider are sacred objects, including objects of cultural patrimony.

In 1998, Bishop Museum was awarded a National Park Service (NPS) grant after two previous proposals were rejected. The grant was for the Museum to work with a Native Hawaiian organization to prepare inventories of unassociated funerary objects. The Museum asked Hui Malama to participate in the project and Hui Malama agreed. We chose to work with Hui Malama because of their widely recognized expertise in the implementation of NAGPRA, their understanding of the proper treatment and disposition of Native Hawaiian human remains and funerary objects, and the need for the Museum to seek resolution to long term problems in

our relationship with Hui Malama and other Hawaiian organizations. Two uniquely qualified individuals were hired by the Museum to prepare inventories of unassociated funerary objects, and carry out consultations and repatriation. The Bishop Museum is grateful to NPS for giving us this opportunity, for we have all come to better understand what it takes to properly care for cultural heritage, what the spiritual basis for repatriation is, and how to treat the remains and sacred objects with respect.

We would like to emphasize that consultations between Native Hawaiian organizations and the Museum have brought about a deep sense of mutual respect, trust, and willingness to resolve issues related to NAGPRA and those that are outside of NAGPRA. This relationship took a long time and much hard work on the part of all involved to establish. It is very important that the agreements reached by Native peoples and museums be honored and supported in the spirit of NAGPRA and that the letter of the law be fulfilled with this spirit.

I would also like to comment on NAGPRA from the national perspective. American Association of Museums (AAM) represents the broad range of museums, from aquaria, art and history museums to natural history museums and zoos, with more than 16,000 members, of which about 11,000 are museum paid staff or volunteers and about 3,000 are museums. A 1994 AAM repatriation survey of 500 of its member institutions included all of its natural history museums and a selected sample of its art and history museums. The survey response rate was 43.6%. Of those responding, 76% of the natural history museums, 43% of the history museums and 23% of the art museums had Native American objects. Those respondents--a little more than 200--alone had almost 3.5 million objects which fell into NAGPRA categories, and that did not include 15 responding natural history museums, including 3 large institutions, which could not, at that time, give an accurate estimate of their NAGPRA-related holdings.

In contrast, in October 1990, at the time of the passage of NAGPRA, the Congressional Budget Office had estimated NAGPRA implementation costs to museums of only \$40 million and to tribes and Native Hawaiian organizations of \$5-10 million over 5 years, assuming that museums and federal agencies held between 100,000 and 200,000 Native American remains and that the cost to inventory and review each remain would be \$50-150. Those estimates now appear to be very low in light of our experience since that time. As a result, viable tribal and museum requests for the NPS grants authorized under NAGPRA continue to exceed available funds by a large margin. In addition, museums cannot repatriate to the tribes until appropriate notices go into the Federal Register, and there is currently a backlog of about 150 such notices at the NPS, about a year's work, due to lack of staff to process them. While I know that it is not in the purview of this Committee to set the annual appropriations levels for the repatriation grant program and for staffing to administer the law, I believe that you would want to be aware of these constraints.

Let me add that Native peoples and museums generally, not just the Bishop, have discovered that the exchange of data required under NAGPRA is yielding new information that helps us all. In the process of identifying sensitive cultural items, museums have learned much more about their entire collections. Delegations of elders and religious leaders have supplied valuable new insights about many objects in the repositories they have visited, and in turn they are discovering items of immense interest to their own tribes, the existence of which had been

unknown in recent generations. Few items in these categories are being sought for repatriation; it is simply that access to the collections has led to much better mutual understanding and exchange of knowledge. While the repatriation process will eventually end as the transfer of materials is completed, the long-term relationships created between museums and tribes, and the more accurate and respectful exhibits and education programs that are the fruit of those relationships, will continue.

In brief, then, while the situation with respect to repatriation differs very broadly across the museum community, the data we have indicates that the experience of the Bishop with many more repatriable items than it could initially estimate; with much higher costs to follow the procedures of NAGPRA, most of which it has had to bear itself; and with the importance of, and the value of, collaboration with Native Americans and Native Hawaiians, is in important respects representative of the experience of museums nationally with the repatriation process.

Before closing, I would like to comment briefly on concerns that have been raised about the appropriateness of continuing to administer NAGPRA at the Archaeology and Ethnology Program at the National Park Service. I can speak only to the experience we have had with the NPS at the Bishop, and what I know of the experience of other museums. That experience has been mostly favorable. Museums have a general sense that the NPS has striven to be even-handed with all parties to the law. Some elements of the regulations are still not completed, and some of the publication of notices necessary to the repatriation process have been delayed, but we understand that that is due to lack of funds for staff. Museums have generally appreciated the NPS staff's expertise on the law and regulations and their breadth of information. We have seen them as partners with all the parties to the law in making the repatriation process work, and we appreciate their grant program, from which the Bishop and many other museums and Native peoples have benefitted.

Thus, if the Committee were to consider moving the administration of the law, museums would want to be sure that such a step did not proceed without some reasonable assurance that there would be at least equal understanding in a new administrator of the complexities of the law and regulations, and of the spirit of cooperation and balance of interests that informs the law and regulations.

Thank you for the opportunity to testify on this issue. I would be happy to respond to any questions you might have.